Exhibit I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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STEVE MARTIN, et al.,

Plaintiffs,

v. 14 Civ. 8950 (TPG)(AJP)

CITY OF NEW YORK, NEW YORK,

Telephone Conference

Defendant.

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New York, N.Y.
May 27, 2015
3:30 p.m.

Before:

HON. ANDREW J. PECK,

Magistrate Judge

APPEARANCES

WOODLEY & McGILLIVARY LLP
Attorneys for Plaintiffs
BY: GREGORY K. McGILLIVARY, Esq.
DIANA J. NOBILE, Esq.

ZACHARY W. CARTER, Corporation Counsel
of the City of New York
Attorney for Defendant
BY: ANDREA M. O'CONNOR, Esq.
SEAN R. RENAGHAN, Esq.
YUVAL RUBINSTEIN, Esq.

(In chambers)

THE COURT: This is Judge Peck. Please state your names for the court reporter, and each time you speak, begin with who is speaking.

MR. McGILLIVARY: This is Greg McGillivary, representing the plaintiffs. With me is Diana Nobile from the law firm of Woodley & McGillivary.

MR. RENAGHAN: This is Sean Renaghan from the New York City Law Department, representing defendant.

MR. RUBINSTEIN: Yuval Rubinstein. Good afternoon, your Honor. Yuval Rubinstein, for the New York City Law Department, also representing the defendant.

MS. O'CONNOR: Andrea O'Connor, also from the New York City Law Department, for the defendant.

THE COURT: Mr. Rubinstein, I don't think we have your appearance.

MR. RUBINSTEIN: Yes. I will be entering my notice of appearance shortly, your Honor. I apologize for that.

THE COURT: No problem. Two things I want to do with all of you today are deal with the fully briefed motion for conditional certification. I have reviewed it. I'm familiar with the law in this area, having written on it before. My inclination is to grant conditional certification. I have some issues as to whether certain job titles are indeed exempt or if that is really disputed. If there is any argument you want to

make in general, I have, as I say, read all the papers.

MR. McGILLIVARY: Your Honor, with respect to the issue of certain jobs potentially being exempt, I think that that is appropriate at this time. It's an affirmative defense by the defendants, of course, they would have the burden of proving. We also point out that all of the people in the positions that we've listed in the notice are subject to exactly the same payroll practices and policies. And, finally, we also note that they're all in the same collective bargaining unit represented by the same union which would be an indication that they're not in managerial jobs.

THE COURT: I guess the question that I have, and it appears from the affidavits that your clients have submitted that people such as assistant superintendent of welfare, which sounds like a high-level title, and as I say, at least one of the affidavits in these job titles that the defense says are exempt, clearly said they were getting overtime in that position, while in another one it was unclear whether the overtime they were getting was in that position or their prior position at DHS that was a lower level. Are you representing that your client, who is an assistant superintendent of welfare or a superintendent of adult institutions, both of which sound like managerial-level titles, were indeed getting some overtime, comp time or other overtime?

MR. McGILLIVARY: Yes, your Honor. In fact, they were

being paid exactly the same as they received overtime and they received it in exactly the same manner as all of the employees, including the ones in the custodial type positions. They all received it in the exact same manner and in the same way that violates the Fair Labor Standards Act.

THE COURT: Let me hear from the city on this.

MS. O'CONNOR: Your Honor, counsel is correct that it is an affirmative defense with respect to the exemption issue. But, as your Honor pointed out, these high-level titles that it's defendant's position are managerial are so dissimilar from the other titles that are at issue in the case that they should not be a part of the collective, nor should plaintiff's counsel be permitted to circulate a notice that would include them. They're part of the case now as counsel has named them as individually named plaintiffs, so they're in the case. However, if the Court is inclined to grant the motion for conditional certification, the notice should not include these titles as they are so dissimilar from the other five titles that are at issue in the case.

THE COURT: But isn't that an issue that might have to do with subclasses, so to speak, although this is not the Rule 23 motion under the New York Labor Law, there is no New York Labor Law claim, but a collective action notice? We already have at least one person in each of these titles who may well be dissimilar to the people in the lower-level titles, but at

the low, prediscovery threshold under the Fair Labor Standards Act for a collective action, how am I to parse that out?

MS. O'CONNOR: Actually, the five exempt titles, yes, it's not a Rule 23, we're not going to have subclasses. I think even with the low threshold for FLSA cases for conditional certification, at least with respect to these five, they don't even meet that low threshold. One of the factors is that they have to be similarly situated with respect to their payrolls. Here, yes, they are covered by the same collective bargaining agreement, but they are not subject to the same payrolls as the five titles that are covered because they are entitled to additional payments under the Fair Labor Standards Act that the other five are not.

THE COURT: Hold on.

MS. O'CONNOR: -- same payroll despite the fact that they're covered by the same collective bargaining agreement.

THE COURT: Hold on a minute. Are you suggesting that if this case were split into two lawsuits that the categories that you agree are nonexempt categories were in one lawsuit and they brought a separate action on behalf of assistant superintendent and superintendent and the other categories, associate fraud investigator, etc., that you believe are exempt, then they would all be similar within that lawsuit?

MS. O'CONNOR: I think that they would be similar. I think that they would be similar with respect to the payrolls.

I do not believe that they would still be similar with respect to job duties. Even within the five titles that are nonexempt, they still perform varying job functions. I think with respect to the claim of the misclassification claim, it would make it somewhat cleaner in terms of litigating a misclassification issue, essentially, if there were two separate cases of bifurcating the misclassification case in terms of liability and then it may be damages in terms of just ease of litigation, just litigating that misclassification issue first. I don't concede, however, that the five titles that are nonexempt perform similar duties such that they even belong in the same collective, regardless.

THE COURT: All right. Go ahead.

MR. McGILLIVARY: The only difference, and I believe defendant admitted this, the only difference in how they're paid, there really is no difference in actually how they are paid. The only difference the defense can point to is they claim that five of the groups are exempt, but they're not paid any differently by the defendant at all and the violations of the Fair Labor Standards Act are identical. Moreover, it's hard to believe by the job title, although the exemption determinations aren't made on job title, that a fraud investigator or an assistant fraud investigator would somehow fall within one of the exemptions of the Fair Labor Standards Act at all. So they're just making these assertions with no

proof and this isn't the appropriate stage at which to make that sort of determination.

THE COURT: All right. I think I've heard enough and I am granting the motion, including all of the categories that the defendant claims are exempt. I am mostly citing to my decision in Spencer v. No Parking Today, Inc., 2013 WL 1040052, obviously Southern District of New York, March 15, 2013, affirmed previously by Judge Carter, and the cases cited therein, in particular, summarizing the law briefly, courts in the Second Circuit employ a two-step method for certification of collective actions under Section 216(b); that is to say, under the Fair Labor Standards Act. The first step involves the court making an initial determination to send notice to potential opt-in plaintiffs who may be similarly situated to the named plaintiffs with respect to whether an FLSA violation has occurred. The purpose of the first step is merely to determine whether similarly situated plaintiffs do, in fact, exist. Thus, although neither the FLSA nor its implementing regulations define similarly situated, to carry their burden at this stage, the plaintiffs need only make a modest factual showing that they and potential opt-in plaintiffs together were victims of a common policy or plan that violated the law. While that modest factual showing cannot be satisfied simply by unsupported assertions, it may be satisfied by the plaintiffs' own pleadings, affidavits and declarations, including any

hearsay statements contained therein, and during this initial step, the court doesn't resolve factual disputes, decide substantive issues going to the ultimate merits, or make credibility determinations. If the plaintiffs demonstrate that similarly situated employees exist, the court may conditionally certify the class, order that appropriate notice be provided to the putative class members, and the action should continue as a collective action throughout the discovery process. Because this standard at the first stage is fairly lenient, courts applying it typically grant conditional certification.

The second step applies after discovery is complete, and at that point, the court will on a fuller record determine whether a so-called collective action may go forward by determining whether the plaintiffs who have opted in are, in fact, similarly situated, and the action may be decertified, so to speak, if the record after discovery reveals that they are not and that the opt-in plaintiffs' claims can then be dismissed without prejudice. That is the more stringent standard, and we are at the first step here, not the second.

The plaintiffs have submitted affidavits from themselves showing that for all of these categories, both the ones that defendants say are managerial and exempt and the ones that everybody admits are nonexempt, the way overtime and related payment methods occur, and particularly among other things the shortchanging allegation with respect to

compensatory-time overtime is common for all of these classes. It may be that after discovery, the Court will have to decertify as to the employee classifications that are found to be managerial and/or otherwise exempt from the FLSA, but that is not appropriate at this stage. Accordingly, I find that the plaintiffs have met their very lenient burden for conditional certification and certify as requested.

Now, with respect to the notice, let's deal with that. I just need a moment to find the attachment to all these papers that is the notice.

As to the email issue, taking it in somewhat random order, based on the arguments, at this stage, the defendants are to provide name and mailing address. If and when mailings get returned, then we will see what email addresses are appropriate.

As to the discovery notice that the defendant wants, I think that's unnecessary and is perhaps designed to convince people not to opt in, so I'm not going to require that change, but I will obviously tell plaintiffs' counsel that opt-in plaintiffs, unlike class members in a Rule 23 class, are actual plaintiffs and they will indeed be required to participate in appropriate discovery. If they don't, they will be dismissed, and that dismissal may well be with prejudice, not without prejudice. But I'm not going to require that that be put in the notice.

The other issue was the paragraph the defendant wanted about their defenses. What page was that on your brief, Ms. O'Connor?

MS. O'CONNOR: That's on page 19, your Honor.

THE COURT: Thank you. Since the collective action notice is going to broader titles than what you have in your paragraph, is there any point in your paragraph versus the paragraph that is here, the paragraph being a single sentence at the very end of section 2?

MS. O'CONNOR: I'm pulling up plaintiffs' counsel's original notice. I would want the inclusion. We can amend the paragraph that's on page 19 of defendant's opposition to the motion to just say defendants maintain that all employees employed by the City of New York, and then to go on and continue as stated, and that would encompass anyone who would join the lawsuit.

THE COURT: It's not just the City of New York. It's at Department of Homeless Services.

Putting aside the last sentence, are plaintiffs willing to take that modification, first sentence?

MR. McGILLIVARY: Yes, your Honor.

THE COURT: Now, as to the last sentence, what are your views on the plaintiffs' side?

MR. McGILLIVARY: I think it's inappropriate, particularly the "as soon as possible." We think it's

threatening and it's unnecessary.

THE COURT: I agree. One other change that I want, even though you all haven't dealt with it, 90 days for the opt-in is clearly excessive and I think it should be either 45 or 60. What are your 'druthers on that? Let's start with the plaintiff.

MR. McGILLIVARY: We would, of course, prefer 60 days because in our experience, this group of plaintiffs do not really have a tremendous amount of interaction at the workplace, and in our experience, people talk about the case, etc., and that's when they actually realize they need to open the mail, and it takes a bit of time, and the homeless services workers are the sort who do not interact tremendously at the workplace and when they're done with their workday, they're out of there very quickly, for understandable reasons.

THE COURT: You realize, as plaintiffs, that the flip of that is that that means there will have to be a longer discovery period, which is to say obviously if somebody who opts in on the last day, the defendants will have an opportunity to take discovery about those people, and that will make it a longer time period before you can get the case to motion practice or trial.

MR. McGILLIVARY: Yes, your Honor. I do agree with you that 90 days is excessive, but 60 days, I think, is fine. I'm not going to quibble over 45, if you think that's

appropriate. It's not a tremendous difference.

THE COURT: Any view from the city?

MS. O'CONNOR: Forty-five days is fine for us.

THE COURT: All right. Forty-five days it is, since the plaintiffs are willing to accept that.

How soon can you get the name and address information?

MS. O'CONNOR: Your Honor, we would be going back three years from the date of the filing of the complaint?

THE COURT: Yes.

MS. O'CONNOR: Just a point of clarification for the notice, the notice would be circulated just to the titles enumerated in the complaint? Because defendants in their opposition objected to the phrase "related occupations for the City of New York at any of its Department of Homeless Service facilities"; I don't know how expansive that view is. We obviously take the position that the notice should be limited to the exact title enumerated in the complaint and not unspecified related occupations.

THE COURT: Mr. McGillivary?

MR. McGILLIVARY: We agree with that, your Honor. One of the reasons we have that language in the notice is so that plaintiffs, when they read it, if they're called something else, even though their official job title might be community associate but they are called custodian at the homeless shelter, they don't get confused and think, Oh, I'll ask

around, and they won't think they're prohibited from participating.

THE COURT: With that clarification, how soon can you provide the information?

MS. O'CONNOR: With those ten titles going back three years, 30 days.

THE COURT: Can you do it faster? I know it's the city and you're a bureaucracy. Nevertheless, certainly current employees should be pretty much a no-brainer.

MS. O'CONNOR: Current employees should be easier. I'm just looking at the calendar. Today is the 27th. Could we have three weeks from today, until June 17?

THE COURT: How about June 15?

MS. O'CONNOR: We can do that, your Honor.

THE COURT: Mr. McGillivary, are you going to be mailing this yourself, or are you using one of the service entities?

MR. McGILLIVARY: We have a mailing service and that will take them about five days to do.

THE COURT: All right. Presumably by no later than June 22, it will be mailed out. Correct?

MR. McGILLIVARY: Correct, your Honor.

THE COURT: Good. Also, the motion requested a tolling of the statute of limitations. I see nothing that would qualify here different than any other FLSA collective

action case to justify or require that, and that request is denied.

Any other issues about the notice from either side?

MR. McGILLIVARY: Not from the plaintiffs, your Honor.

MS. O'CONNOR: None from defendant, your Honor.

THE COURT: Good. Now, with that in mind, what are your views on how much time you need for discovery? We'll start with the plaintiffs.

MR. McGILLIVARY: From the plaintiffs, your Honor, what we would hope is that we could reach a joint stipulation regarding the use of test plaintiffs and we can work on that really right away. The only thing we'll need to know to actually finalize that is how many people have opted in, and we've reached the joint stipulation with the city. We did it in the Mullins case, which you successfully mediated to settlement, with the NYPD sergeant. We did it recently with two other groups of employees, job occupational specialists and child protective service workers and also with the paramedics and EMTs. We're confident that will be the first thing to get done and make sure that the minute we have the universe we can pick the test plaintiffs and get into discovery, and then we think discovery should take about six to nine months from there.

THE COURT: I recognize you have a lot of plaintiffs already and six to nine months is particularly long in my

courtroom. I'm not inclined to go there. I mean, I'd be willing to give you a short period to try to negotiate something with the city, except that when we tried to get you in tomorrow or next week, everybody was conflictingly unavailable, which is why we're doing it on the phone today. Frankly, I'm not sure, considering how many named plaintiffs there are, that you don't have enough to design test plaintiffs, etc., start discovery, albeit you may need to add some from the opt-ins.

What's the city's view?

MS. O'CONNOR: Your Honor, counsel's correct in that we've reached a discovery stipulation in prior cases and pending cases that have worked to streamline discovery to the extent possible. The difference with this case is that we have ten different titles. In the other cases, we had a maximum of two, and so it was much easier to select test plaintiffs in that we didn't have to account for whether or not the test plaintiffs were representative of multiple titles. Here, we're going to have to ensure that whatever random sample we select isn't, in fact, representative of all the titles and that all titles are proportionally represented in the test plaintiffs' pool. As your Honor said, in order to do that, we can start on it now, however, we're not going to know the complete universe of plaintiffs until after the opt-in period, and that will affect the proportions of what titles are identified as test

plaintiffs. We may have ten fraud investigators as test plaintiffs and only two case workers because that's how the proportions of the plaintiffs play out. So in terms of agreeing to a discovery stipulation before we know the pool of plaintiffs, it will be difficult, unless, of course, it's subject to modification pending the close of the opt-in period.

THE COURT: I would rather you all start discovery now and modify -- really, it's 45 days to the notice plus 15 or 20 while you're getting the lists together -- rather than wait 60 days and then start, particularly since I think some of the discovery will be from DHS regardless of how many plaintiffs there are for each job title and the discovery going to individual plaintiffs, whether of them or of DHS about them, I think you can start all of that. And decide that you have too many named plaintiffs in title 1 and not enough in title 3 and, therefore, for those you're going to use opt-ins or whatever. If I gave you a week or two to come up with something and report back to me, would that work?

MS. O'CONNOR: Yes, your Honor.

MR. McGILLIVARY: Yes, your Honor, and I actually have to admit to not being smart enough to think that we had so many named plaintiffs we could really get going on those quickly. I think that's an excellent idea.

THE COURT: How about a written, hopefully joint, report by June 10, maybe sooner, eighth; what's your pleasure?

MR. McGILLIVARY: The eighth would work for the plaintiffs, your Honor.

MS. O'CONNOR: The eighth is fine also.

THE COURT: Written report to be received by the eighth by the Court, and let me be clear. Somebody said six to nine months. You'll be lucky if you get six starting at June 8. I suspect you've been in front of me, as Mr. McGillivary said, on settlement, not necessarily on discovery. Read my rules. I run a self-proclaimed rocket docket, so if you propose something reasonable with the ability to deal with changes in it when the opt-in period closes, it's a democracy: You each get a vote, I get three votes, so use your votes well and we'll see where we go from there.

One or two other questions from my side of things and then I'll let you raise anything else you want to raise. First, you've all referred to the CBA. Is the union involved in this, behind this? Is something that the Court does, assuming the plaintiffs prevail in some way, going to wind up conflicting with the CBA or other union requirements or just benefit the union members? Should they be involved officially in some way?

For all I know, they're the people who hired you, Mr. McGillivary, but what's the union role, if any?

MR. McGILLIVARY: The union role is that they're, I guess the best way to put it would be a cheerleader for us.

We've been in contact with them and they helped set up some meetings and things like that, but they are not paying us or funding it or anything like that. But there shouldn't be any conflict with the collective bargaining agreement at all. The collective bargaining agreement, of course under the law, has to at least meet the minimal standards of the Fair Labor Standards Act and it can't conflict, not that it does conflict, it just isn't being implemented properly.

THE COURT: Ms. O'Connor, any views from the city?

MS. O'CONNOR: None contrary to what plaintiffs' counsel has indicated.

THE COURT: That was item one. Item two, you all have the option, pursuant to 28 U.S. Code Section 636(c), to have the case in front of me for all purposes instead of divided between me and Judge Griesa. It requires both sides to say yes. If one of you says yes and the other says no or I don't know or I've got to run it up the flagpole, or whatever, until there are two yeses, you're in front of me subject to having rights to take objections to Judge Griesa. I suspect you need to talk to higher-ups at the law department at least. Shall we leave it that when you all report back on June 8 you will also report as to the parties' respective views on the 636(c) consent?

MS. O'CONNOR: Yes, your Honor. That's fine. We can give that indication in the June 8 letter.

THE COURT: And do it via either "attached is the signed consent form" or "the parties do not consent" if one or more of you have decided not to consent or "the parties are still considering it" if that's where you wind up. But the rules say I'm not supposed to know who said yes and who said no. Frankly, I don't care. You're with me for what you're with me for, and it is what it is.

Are you all thinking about, if not actively pursuing, when you want to talk settlement and how you want to do that?

MR. McGILLIVARY: Your Honor, we would want to get the payroll data, because a lot of this case is driven by that. It's actually going to be in the pay records, and so once we receive that for all of the plaintiffs, we can do our own preliminary calculations and that would be a good time to talk about settlement.

THE COURT: All right. All of you keep in mind that 99 percent of cases in federal court never get to trial; they either settle or get knocked out on a motion. You can go to the Southern District mediation program if you want to do that. You can have a settlement conference in front of me. If you're consenting to have the case in front of me for all purposes, although there is a jury trial request, then you can either have the settlement conference in front of me or in front of one of my magistrate judge colleagues, if you'd rather not be in front of the trial judge. And, of course, third, you can

spend some money and go out to the usual for-pay ADR services. But since, as you all know, under the FLSA, if plaintiffs prevail, they're entitled to attorney's fees, you obviously jointly have an interest in resolving it sooner rather than later.

I'm not going to set another conference date with you now. Once I see your June 8 report, we'll set up regular status conferences every 30 or 45 days, or thereabouts, but make sure to read my rules. Any time you have an issue, just write a letter via ECF and tell me what help you want, preferably after conferring with the other side. Alternatively, when we've set up conference dates in the event there are no disputes, you're on track for whatever the discovery deadline is and there is nothing to talk about on settlement, you can jointly, and I emphasize jointly but not singly, ask to have the conference adjourned, again, either by letter or by calling my secretary, and nine times out of ten, we grant that, but the conference is not adjourned until you get either verbal assurance from my staff or a written order of some sort. If one party tries to postpone the conference and does not represent that it's on consent of the other side, generally the conference will not be postponed because it's been my practice that the party seeking the postponement is probably in default of some obligation to the other side.

Any issues, questions, anything from either of you?

MR. McGILLIVARY: Nothing from the plaintiffs, your Honor.

MS. O'CONNOR: Nothing from defendant.

THE COURT: Two last points. The original ECF has Rachel Cartwright as being involved in the case for the law department. Is she still with you all?

MS. O'CONNOR: She is not, your Honor.

THE COURT: You might want to notify the ECF system, but I've now taken her off of my list.

It is my practice to have court reporters at all conferences. The transcript is the Court's order, and I guess I will state this time and not repeat in the future, you should all know, pursuant to 28 U.S. Code 636 and Federal Rule of Civil Procedure 72, you have 14 calendar days to file objections to any of my rulings. File the objections with Judge Griesa with a copy to me. Failure to do so constitutes a waiver of any such objections. Moreover, filing of objections does not stay any order unless you ask me for and get a stay from me, and the 14 days starts immediately from any conference like this, telephonic or in person, regardless of how soon you actually obtain the transcript. And it is my practice to have the parties jointly purchase the transcript of each conference, and that results in a 50/50 split of the cost. In this case, since you're on the phone, you can go to the Web site, www.sdreporters.com, SD as in Southern District.

With that, unless anyone has a last question about any of that, we would be adjourned.

MS. O'CONNOR: Nothing from defendant, your Honor.

MR. McGILLIVARY: Thank you, your Honor.

THE COURT: We are adjourned. Thank you, all.

(Adjourned)